

REMARKS/ARGUMENTS

I. Drawing Changes

The Office further objected to the depictions of Figures 3 and 4 as being inconsistent with Figure 1. Apparently, the Office views the arms from which the lateral prongs extend as all having the same length. While one could conceivably mold the arms in that manner, closer inspection of Figure 1 shows that the lower angled prongs have relatively longer arms (to accommodate flanges 18 and screw holes 20), whereas the higher angled prongs have relatively shorter arms. Hopefully this is made clear in Figure 3.

The Office also questioned whether Figure 3 accurately depicts the glue trough (17) and the rail (15) as being centered. Those objections and comments are not quite understood. From the applicant's perspective, Figure 3 accurately depicts those elements.

The Office further objected to the Drawing as failing to show the superior prongs recited in claim 10. The applicant disagrees with the validity of that objection, since figures 1, 2, and 3 all show superior prongs 16 as distinct from lateral prongs 14. In addition, claims 10 doesn't even recite "superior prongs".

In short, the applicant fails to appreciate the need to amend the Drawing.

II. Claim Objections

Claim 10 The Office objected that claim 10 recites "cross-shaped" prongs in a manner that could be interpreted to imply that the entire prongs are have a cross-sectional area. That objection is moot in view of removal of the term from the claim. The Office objected to use of the terms "alternating" and "a" in lines 7 and 8, respectively. Those objections are mooted in view of removal of the terms from the claim.

Claim 11 The Office objected that claim 11 recites "spaced positions" in a confusing manner. That objection is mooted in view of removal of the term from the claim.

Claim 20 The Office objected that claim 20 recites "has" in a confusing manner. That objection is mooted in view of removal of the term from the claim.

Claim 21. The Office objected that claim 21 recites "comprising" in a confusing manner. That objection is mooted in view of removal of the term from the claim. The Office also noted a redundancy, which has been eliminated by amendment herein.

Claim 24. The Office objected that the phrase "of the rail has" should be changed to --and--. The applicant agrees, and has modified the claim as suggested.

Claim 25. The Office objected that the phrase "its upper surface" should be changed to --the rail--. The applicant agrees, and has modified the claim as suggested.

Claim 26. The Office suggested rewording of the claim. The suggestion is mooted in view of a different revision, which nevertheless eliminates the objectionable language.

Claim 27. The Office suggested rewording of the claim. The suggestion is mooted in view of a different revision, which nevertheless eliminates the objectionable language.

Claims 27 - 29. The Office objected to lack of antecedent basis for the term "the superiorly extending prongs". The applicant agrees, and has reworded the claim accordingly.

Claim 31. The Office suggested rewording of the claim in various ways. The suggestions are moot in view of a different revision, which nevertheless eliminates the objectionable language.

Claim 31. The Office objects that there is no antecedent basis for "laterally extending flanges". The objection is moot in view of elimination of the objectionable language.

Claim 33. The Office objects to the order in which "troughs" and "notches" are recited. The objection is moot in view of elimination of the objectionable language.

III. 35 USC 102(b)

Claims 10-18 and 2—34 were rejected as being anticipated by Richardson (GB2344269). The applicant disagrees with the rejections, especially in view of the amendments herein. Among other things, claim 1 and its dependencies all now currently recite that the deterrent includes upwardly extending prongs intermediate the pairs of laterally extending prongs. Richardson doesn't do that. Richardson teaches alternating pairs of prongs in which one of each

member of each pair is almost vertical. Claim 31 and its dependencies expressly require pluralities of laterally and upwardly extending prongs that collectively project in five different directions from the base. Richardson's alternating pairs of prongs only alternate in four directions from its base.

The examiner objected that the previously asserted distinctions between the presently claimed subject matter and the cited prior art were not clearly referenced in the application as being of great significance. The applicant fails to understand the import of those comments, and asks that the examiner cite to case law which could be read to restrict claims to that which the specification points out as being solutions to recognized problems. The applicant does not believe that is a proper objection or rejection.

In any event, the criticality of the currently claimed subject matter is supported by the specification at the paragraph bridging pages 3-4. In particular, the specification points out that the applicant's own prior patent (US 5243444) teaches bird deterrents with "five rayed" prongs, and further points out that previously it was unknown how to manufacture such devices in as a single ("unitary") plastic piece. Richardson figured out how to manufacture a unitary four-rayed deterrent, but not a five rayed version. Shaw figured out how to manufacture a five rayed version, but not in a unitary manner. The key was to have pairs of high/low lateral rays that alternated with intermediate upwardly directed prongs. That has now been more clearly claimed.

IV. 35 USC 103

Dependent claims 11-18, 2-30 and 32-34 were deemed to be obvious over Richardson (GB 2344269). Those rejections are obviated the amendments to the claims herein.


V. New Claim

The applicant has included as claim 32 the verbatim language proposed by the examiner in the 4/26/05 office action. At the outset it was not immediately clear how that claim could be allowed over Richardson. It is now appreciated that Richardson does not have laterally extending prongs that alternate at various angles of no more than 70 degrees. Richardson teaches that the higher angled prongs are close to normal relative to the base.

VI. Request For Allowance

Claims 10-18, and 20-35 are pending in this application. The applicant requests allowance of all pending claims

Respectfully submitted,
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